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COMMISSION ON HUMAN RIGHTS

Fifty-eighth session

SUMMARY RECORD OF THE 37th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 12 April 2002, at 10 a.m.

<u>Chairperson:</u>	Mr. JAKUBOWSKI	(Poland)
later:	Mr. LEWALTER (Vice-Chairperson)	(Germany)
later:	Mr. JAKUBOWSKI (Chairperson)	(Poland)

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The meeting was called to order at 10.10 a.m.

STATEMENT BY THE SECRETARY-GENERAL

1. The SECRETARY-GENERAL said that it was always a pleasure for him to join the meetings of the Commission. Ever since he had become Secretary-General, he had sought to place human rights at the centre of all that the United Nations did. He therefore considered the Commission's work to be very important and paid particular attention to it.
2. No less obviously, he attached great importance to the work of the United Nations High Commissioner for Human Rights and her staff, some of whom took great personal risks in the cause of human rights. He paid a special tribute to those who had lost their lives in the line of duty.
3. Over the past five years, the United Nations had gained immensely from the presence of Mrs. Mary Robinson as High Commissioner. She had brought to the office not only the great prestige she had earned in her earlier career but also - and more importantly - an unflagging and fearless determination to uphold the cause of human rights throughout the world. The poor, the oppressed and the victims of injustice in every country had reason to be grateful to her. The task of finding a worthy successor was one of the most challenging assignments facing him. On behalf of the whole world community, he thanked the High Commissioner for what she had done. He wished her well in the future and expressed the hope - but also the confidence - that, in whatever capacity she served, her talents would continue to be deployed in the cause of justice and universal human rights. He was also glad that she would remain in her post until September 2002, working with her usual energy.
4. The current session of the Commission must be one of the most important it had ever held. It met under the shadow of the desperate situation in Israel and the occupied Palestinian territories, which had become an affront to the conscience of mankind. He would revert to the subject at the end of his address. It also met in the shadow of what had happened in the United States on 11 September 2001 and of what had happened in many countries since then, as a direct or indirect consequence. On that day, several thousand human beings had been brutally deprived of the most fundamental of all human rights - the right to life - by a premeditated act of utter nihilism, which many had called a crime against humanity.
5. That abominable act had expressed a state of mind in which human rights ceased to have any meaning. The precise motives of those who had undertaken it were not known and might never be known. It had to be assumed that, for whatever reason, they had reached a point where human life - their own and other people's - had lost all value in their eyes. They had also reached the point where they were prepared to use any means, no matter how callous, cruel or destructive, to achieve their political objective.
6. That was the scale of the challenge. That was the attitude that the international community must confront, combat and refute, wherever it might arise. It followed that security could not be achieved by sacrificing human rights. To try to do so would hand the terrorists a

victory beyond their dreams. On the contrary, he was convinced that greater respect for human rights, along with democracy and social justice, would, in the long term, prove the only effective prophylactic against terror.

7. The struggle to give everyone on the planet a reason to value his or her own rights and to respect those of others must continue. At the same time, the primacy of the rule of law and the principle that certain acts were so evil in themselves that no cause, however noble, could justify their use must be constantly reaffirmed. The end did not justify the means. Instead, the means tarnished, and might pervert, the end.

8. No doubt there was a hard core of terrorists whose minds were already beyond reach and against whom the international community had no choice but to defend itself physically, with great vigilance at all times, dispensing exemplary justice when they were captured and, when necessary, using military force. It was essential, however, to act always in accordance with the rule of law. In defending itself, the international community must be careful not to play into the enemy's hands or to act as his recruiting sergeant.

9. Vigilance was essential but, in exercising it, it was important not to lose sight of such fundamental principles as the presumption of innocence until guilt was proved. Nor must it be forgotten that even the guilty retained certain basic rights such as those laid down in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Governments must avoid falling into the trap of thinking their aim so vital that even the worst of means could be used to reach it. That way, instead of preventing terrorism, he feared they would encourage it. Governments should rather ensure that their security measures were firmly founded in law. In defending the rule of law, they must themselves be bound by law.

10. As for justice, it must indeed be both the means and the end of the struggle against terrorism. Mass murderers must no longer go unpunished, whether they were terrorists, warlords or dictators. That was why he so greatly welcomed the historic milestone passed the previous day when the threshold of 60 ratifications of the Rome Statute of the International Criminal Court had been achieved. The Statute would come into force on 1 July 2002 and the Court should be operational by 2003.

11. The establishment of the Court would not detract from the responsibility of States to prosecute and punish war crimes and crimes against humanity committed by their citizens or within their jurisdiction. Nor would it undermine their ability to do so. On the contrary, it would give all States a strong incentive to improve their standards in that respect, since the Court would have jurisdiction only where the State primarily concerned was either unable or unwilling to proceed. Over time, he believed that the practice and procedures of the Court would provide a benchmark of international justice against which the standards of all States could be measured.

12. It was a well-known principle that justice must not only be done but must also be clearly seen to be done. When criminals were punished, no fair-minded person should be able to doubt the justice of either the conviction or the sentence.

13. Justice did not mean only punishment of the guilty. It must also mean fair treatment of the innocent. It was essential therefore not to place whole communities under suspicion and subject them to harassment because of acts committed by some of their members. Nor must the struggle against terrorism be allowed to become a pretext for the suppression of legitimate opposition or dissent. In 1999, he had told the Commission that no Government had the right to hide behind national sovereignty in order to violate the human rights or fundamental freedoms of its people. That point was currently more widely accepted than it had been at the time. Indeed, it was well made in the recent report by the independent International Commission on Intervention and State Sovereignty, entitled The Responsibility to Protect, which had addressed all aspects of the problem. After broad consultations conducted in every region of the world, that Commission had concluded that there was a wide understanding that States had the responsibility to uphold and protect the human rights of their citizens. When they failed or themselves became the threat from which their citizens needed protection, the responsibility fell on the international community.

14. Terrorism was one of the threats against which States had not only the right but the duty to protect their citizens. They must also, however, take the greatest care to ensure that counter-terrorism did not, any more than sovereignty, become an all-embracing concept used to cloak or justify human rights violations. Any sacrifice of fundamental freedoms in the struggle against terror was not only wrong in itself but would ultimately be self-defeating.

15. The greatest effort was needed to ensure fair treatment for those most exposed to prejudice, such as religious and other minorities, as well as migrants. Never had the need for tolerance been greater. Diversity was, after all, what gave the human species its splendour and enabled it to make progress, as peoples of different experience and culture learned from one another. When people failed to respect each other's right to different beliefs and forms of worship, or to form different communities with their own ways of life, their humanity was diminished. What could not and must not be tolerated was the use of violence by members of one community against another. All attacks on mosques, churches, synagogues and other centres of communal life must stop.

16. Such issues had already been on the Commission's agenda before 11 September 2001. Indeed, the very week before the tragic events of that date, they had been under discussion at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. His point was to stress that what had happened on 11 September had not diminished the importance of the agenda but had, if anything, increased it. The need for effective mechanisms to protect minorities and other vulnerable groups was as great as it had ever been.

17. The Commission on Human Rights had itself a vital role to play in devising and overseeing such mechanisms. In the struggle against terrorism, its role must be complementary to that of the Security Council. Of course, the Council and its Counter-Terrorism Committee must themselves be sensitive to human rights as they pursued their vital work. However, whereas the Council had primary responsibility for the maintenance of international peace and security, the Commission had a particular responsibility to promote the international implementation of human rights. It must therefore make every effort to protect those threatened by human rights violations, whether resulting directly from terrorism or committed in the name of counter-terrorism. In that context, he noted that the Commission had decided to send a

mission, led by the High Commissioner, to the Middle East. The political and the human rights bodies must clearly understand that their tasks were complementary and make a real effort to work coherently together. Only thus could there be an adequate response to the challenges facing the international community.

18. Turning to the question of military force, he said that it might be necessary, in certain cases, to defend a country against terrorism, as against other forms of assault. Care must be taken, however, to use force only in self-defence or in accordance with Security Council decisions. And when it was used, it should be used within the law: the international law of war. Targeting civilians, and the disproportionate use of force beyond legitimate military objectives, were illegal practices which must be rejected. Nor could military action be considered legitimate self-defence when used to perpetuate the occupation of foreign territory.

19. Moral clarity and intellectual accuracy were required in every judgement on the use of force by States. The same must apply, however, when judging the actions of armed resistance movements. The killing of innocent civilians violated international law and undermined the legitimacy of the cause it purported to serve. That, of course, applied also to suicide bombings aimed at civilians, which were as indiscriminate and morally repugnant as they were politically harmful.

20. Such considerations applied particularly, needless to say, to current events in the Middle East, where international norms of human rights and humanitarian law were being violated on a massive scale. Everyone must be deeply upset by the spectacle of so many unnecessary deaths, so much destruction and distress, so much erosion of restraints and blunted moral sensibility. He had already made his position clear in the Security Council and in direct contacts with the leaders of both sides.

21. The parties were locked in the logic of war. In order to move them to the logic of peace and bring peace and security again within reach, the core issues - occupation, violence, including terrorism, and the economic plight of the Palestinians - must be addressed. It must also be remembered that one cause of the current situation had been the denial of fundamental human rights. The task of the international community and of the Commission was to help bring both parties back to civilized standards of conduct; to insist on respect for human rights and humanitarian law; to demand access for humanitarian organizations; and to press for a return to respect for freedom of expression.

22. A start would be for the leaders of both sides to make an immediate declaration of commitment to respect basic norms of human rights and humanitarian law. He solemnly called upon them to take that step forthwith.

23. One of the lessons of the history of the United Nations was that it could not afford to be neutral in the face of great moral challenges. It was currently faced with such a moral challenge. Wanton disregard for human rights and humanitarian law could not be accepted. Those responsible must be made to understand that they faced the verdict of history.

24. He pleaded once again for respect for international law, including international humanitarian law, whenever force was used, whether by States or by resistance movements. In

particular, it was essential to ensure respect for the four Geneva Conventions. Their purpose was crystal clear and their wording broad enough to apply to all armed conflicts, no matter what the specific circumstances. There was no need to reinterpret them. What was vital was that they should be obeyed.

STATEMENT BY THE DEPUTY MINISTER FOR FOREIGN AFFAIRS OF ITALY

25. Ms. BONIVER (Italy) said that she was very pleased at being able to address the Commission on the same day as the Secretary-General, especially after the announcement he had made the previous day of the entry into force of the Rome Statute of the International Criminal Court. Her country, which had striven for that goal, welcomed the announcement as a historic step forward that would provide the international community with an impartial, permanent instrument to punish the worst crimes against humanity and human rights. She firmly believed that the establishment of the Court would go a long way towards preventing such crimes.

26. Her Government rejoiced, on the one hand, at the positive signs revealing a strengthening of the world's moral conscience but, on the other, mourned the far too many innocent victims of the vicious blend of violence and hatred that engendered terrorism. The events of 11 September 2001 had shown, in a most cruel and devastating way, that nobody was immune from the disease of terrorism, whose danger was permanently looming. The Italian people had participated profoundly in the grief of the citizens of New York and the people of the United States as a whole, inspired by a feeling of political commitment and human solidarity.

27. They were equally concerned and moved by the terrible plight of the Palestinian people and by the terrorist attacks against innocent Israeli civilians who had sought refuge and security in that land. The number of victims of that dreadful new form of suicide terrorism were known, but those of the Israeli military action, especially over the past two weeks, were not. She therefore urged the Israeli Government to allow immediate humanitarian relief to reach the no doubt numerous victims who waited to be relieved, as was their right according to the most basic humanitarian conventions.

28. It should come as no surprise that terrorism and human rights lay at the very heart of the Commission's work as never before. That that was so was a positive confirmation and an encouraging token of the existence of a common commitment against terrorism, which must not be allowed to diminish the guarantees underpinning inalienable human rights. The Italian experience in fighting terrorism in the 1970s had clearly shown that terrorist groups could be defeated without the suspension of constitutional guarantees. On the contrary, victory had been achieved by strengthening general support for democracy.

29. Nobody was safe from the threat of terrorism, which could flare up unexpectedly and often struck down the best people. A recent case had been that of Marco Biagi, an upright and brave social reformer and a respected adviser to her Government, who had been murdered a month previously in Bologna, in a way that was reminiscent of the slaying of the Christian Democrat leader Aldo Moro and many other loyal servants of the State.

30. She wished to explain to the Commission the rationale behind two recent decisions by her delegation. First of all, it had decided to withdraw its candidature for membership of the

Commission at its next session because of its wish to promote the principle of equal rotation amongst Western countries in the Commission. The reasoning was not solely that the United States should be involved in the Commission's work, which would otherwise lose credibility; her delegation also hoped that the return of the United States would provide a real opportunity for fruitful work to promote human rights on the basis of shared values and a harmonized approach. Secondly, she drew attention to the fact that Italy had recently welcomed the relevant Commission mechanisms in connection with allegations relating to the behaviour of the Italian police at the G-8 Genoa Summit and the issue of the independence of the judiciary. She could obviously not deal with the substance of the issues, but she wished to express her Government's strong belief in the usefulness of involvement with the international community. It would continue to cooperate fully with Commission mechanisms.

31. Her Government attached particular importance to the issue of refugees, whose human rights were violated first of all within their own countries and subsequently - as the United Nations High Commissioner for Refugees had pointed out - again in the camps, where 12 million people lived and where one generation after another eked out a living without any real prospect of returning to normal life, relying on inadequate assistance and exposed to all kinds of abuse and violence. It was the responsibility of the whole international community to provide refugees with decent assistance and real prospects of returning to their homeland or, should that prove impossible, of settling for a new life in a receiving country, in accordance with the Convention relating to the Status of Refugees.

32. Afghanistan, a country she had recently visited and whose fragile humanitarian situation had impressed her deeply, provided a test case of how to tackle the complicated, post-conflict process. The physical reconstruction of the country, after long years of internecine strife and isolation, required a commitment by the entire international community. Not even that would suffice, however, unless it was accompanied by full respect for human rights, the establishment of democratic institutions to ensure the rule of law and the consolidation of mutual trust amongst the country's different ethnic components. The main elements underpinning national reconciliation were to be found in respect for international standards on fundamental rights and liberties. In that framework, her Government was prepared to finance the High Commissioner's project for the establishment of a National Human Rights Commission in Afghanistan.

33. Her Government considered torture and the death penalty to be the most horrendous violations of human rights. The draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment contained all the innovations necessary to prevent that hideous practice. Italian institutions and civil society had devoted great efforts to abolishing the death penalty, initially *de facto* and subsequently *de jure*. As the Presidency had solemnly confirmed, the European Union would continue to be at the forefront of that struggle.

34. The issue of women and human rights seemed truly emblematic for the whole human rights discourse. Although gender discrimination and violations of women's human rights were still a worldwide plague, it was reductive and paternalistic to see women only as victims. They should also be seen as precious elements in the human rights arena. The initiative entitled "Strengthening the Role of Women in Conflict Prevention", adopted by the G-8 foreign ministers in July 2001, stated that women were negotiators, peacemakers and advisers, whose

efforts were vital to sustainable peace. That kind of reasoning deserved to be reiterated and implemented: women should be active subjects in the human rights field and not only objects of concern.

35. With regard to the widening debate on the need to depoliticize the Commission's work so as to render it less amenable to political confrontation and more objective and functional in its approach, her Government believed that human rights represented a political top priority in themselves and must therefore be kept under observation, with due regard for their unavoidable political dimension. Although there was a core of human rights with universal validity, whatever the historic and cultural contexts, there was still scope for a cultural dialogue which had not really begun and which implied a human and intellectual eagerness to know and understand better the values, history, philosophy, traditions and feelings of other peoples. Diversity could enrich the dialogue between different civilizations, particularly when it came to the implementation and defence of human rights.

36. During its "sabbatical leave" from the Commission, her Government would continue to make a full contribution as an observer and within the European Union. It would also reflect on the possibility of hosting a cultural project complementing and integrating the political debate on human rights. Such a move was crucial in the current circumstances, where new opportunities appeared, in the midst of painful confrontations, for fruitful dialogue in various fields, including religion. Her Government intended to explore that issue with all interested countries, beginning with the United States, to which it passed the torch of membership of the Commission.

37. Lastly, her Government wished to express its sincerest appreciation and gratitude to the High Commissioner, a courageous woman who had been uncompromising when necessary, for the passion she had shown in carrying out her mandate. It was to be hoped that there were others who would be as passionate about strengthening human rights worldwide.

STATEMENT BY THE MINISTER FOR FOREIGN AFFAIRS OF LIECHTENSTEIN

38. Mr. WALCH (Liechtenstein) said that, the interest shown by the Secretary-General in the Commission's work and the passionate commitment of the High Commissioner to her almost impossible job had contributed greatly to the credibility of the Commission, thus giving added weight to its efforts for human rights.

39. Terrorism was the most pressing issue facing the international community in the aftermath of 11 September 2001 and all States must continue to work together to combat terrorism; unilateralism, self-interest and lack of transparency could not but weaken cooperative efforts. His Government had cooperated fully with the Counter-Terrorism Committee, the Financial Action Task Force (FATF) and other mechanisms. The Commission, to maintain its credibility, must address terrorism from a human rights perspective in an unequivocal and legally sound manner.

40. In the first place, terrorist activities had an impact on human rights and, although the promotion and protection of human rights was the responsibility of States, which were therefore accountable for human rights violations, the role of non-state actors must also be addressed in a meaningful and politically sustainable manner. It was important that the peoples of the world

themselves understood the human rights issues involved in terrorism. He therefore welcomed the imminent entry into force of the Rome Statute of the International Criminal Court as a historic step forward. The Statute did not distinguish between State agents and non-state actors in respect of criminal responsibility.

41. A balance must be struck between protection of human rights and the fight against terrorism. Existing human rights law already defined a set of human rights which could be derogated from under clearly defined circumstances, while other human rights such as the right to life, freedom from torture and freedom of thought, conscience and religion must be upheld at all times. Those standards were among the most important achievements of the United Nations and the current Middle-East crisis proved the need for fully respecting them. The international community must not compromise its own values in the fight against those who were determined to destroy such values. The fight against terrorism must take into account the human rights dimension; the credibility thus acquired would ensure its effectiveness in the long run.

42. The debate on terrorism must also address its root causes, foremost among them extreme poverty, which was not only a human rights violation in itself but also led to social marginalization and exclusion. The growth of inequality was a major challenge and he stressed that globalization would succeed only if it succeeded for everyone, a goal which was necessary not only in the name of solidarity but also in the name of enlightened self-interest. His Government remained committed to the Millennium Development Goals and he noted that the recent Monterrey Conference had been an important first step towards reaching them. The task of the Commission was to emphasize the human rights aspect of the right to development and he recalled that the Declaration on the Right to Development put the human person at the centre of development efforts. Only the full and active involvement of all individuals in their respective societies could lead to sustainable development.

43. The Commission could further enhance its credibility through reform, with a stronger focus in its agenda and showing more discipline in its methods of work. Reforms adopted at the current session in response to budgetary and time constraints had been effective. More meeting time was not the answer; the Commission must seize the opportunity created by the current crisis to show greater discipline and make the most efficient use possible of its time.

44. Mr. Lewalter (Germany), Vice-Chairperson, took the Chair.

STATEMENT BY THE ASSISTANT DEPUTY MINISTER FOR POLITICAL AFFAIRS OF SAUDI ARABIA

45. Prince Turki AL-SAUD (Saudi Arabia), having expressed his Government's deep appreciation of the role played by the High Commissioner in promoting human rights throughout the world, said that the international community was currently dealing with the aftermath of the shameful and odious terrorist attack against the United States on 11 September 2001. That attack was an outrage to all peace-loving nations, peoples and religions, including Islam, which condemned all acts of terrorism against the innocent as flagrant violations of its moral principles. His Government had condemned those acts, which had given rise to measures that had affected the spirit of transparency and trust prevailing among States and peoples and hampered efforts to promote a rapprochement among civilizations and cultures. Bilateral relations had also been

affected and he supported the need for joint international efforts to combat terrorism, tackle its causes and defeat those who would incite to violence and discrimination and bring about a return to the ages of conflict and instability.

46. Before 11 September, human rights had become the overriding preoccupation of the United Nations, as clearly illustrated by the establishment of human rights mechanisms, the emergence of a number of non-governmental human rights organizations and the convening of international conferences, most recently the Durban Conference. The Commission's efforts assumed even greater importance given the grave circumstances currently facing the international community, which necessitated constructive dialogue and transparency in seeking to adopt collective measures under United Nations auspices.

47. The current crisis was the result of a breakdown in human dialogue as well as of the existence of irresponsible voices which sought to provoke conflict and discrimination in order to weaken international endeavours to promote and protect human rights. The international community must therefore adopt a prudent, objective and carefully considered approach with a view to emerging from the crisis still committed to constructive dialogue and transparency and opposed to all forms of discrimination and segregation.

48. Although 2001 had been the International Year of Mobilization against Racism, Racial Discrimination, Xenophobia and Related Intolerance and in spite of the World Conference on the subject at Durban, the world had witnessed after 11 September a wave of xenophobia against Arabs and Muslims which was incompatible with the Commission's aims and purposes. He recalled that, several years previously, the Islamic Group had submitted to the Commission a draft resolution on defamation of religions, which had been adopted, and expressed grave concern at attempts to exploit the tragedy and wrongfully point the finger of suspicion at Islam and Muslims. He was also concerned at discrimination against religious beliefs in some societies and at attempts to associate Islam with terrorism and bigotry, the result being that in various countries Muslims were being subjected to discrimination and aggression and their places of worship attacked.

49. The concept of human rights had evolved through a long process of social, political and philosophical development deeply rooted in religious, ideological, political and social doctrines. Islam had contributed significantly to the principles and values of human rights for the purpose of guaranteeing a decent and stable life for all human beings by defining their rights in an unambiguous and unquestionable manner. He hoped that the recent forum in Istanbul and the symposium organized by the Organization of the Islamic Conference (OIC) in Geneva a few days previously had enriched understanding of human rights, and given a positive impetus to dialogue among civilizations so as to promote transparency and dispel doubts about the best course of action.

50. His Government supported the noble concepts embodied in the international human rights instruments and, in a period of barely six years, had developed a Code of Criminal Procedure, a Code of Civil Procedure and a Code of Practice for Lawyers, which reflected the progress made in the protection and development of human rights domestically and the incorporation of international standards. It had also acceded to four of the six principal international human rights instruments and was in the process of acceding to the remaining two.

It had consistently cooperated with the United Nations human rights mechanisms, human rights divisions had been established in the relevant government agencies and a governmental and non-governmental human rights commission would soon be established.

51. At the international level, his Government made voluntary contributions to human rights bodies and, with a view to promoting one of the principal human rights, the right to development, it allocated 4 per cent of its gross national product (GNP) to foreign aid, the highest percentage of any country. Over the previous 20 years, in fact, it had allocated US\$ 76 billion for the purpose. He invited other States to do likewise in order to promote development in the poorer countries.

52. No discussion of human rights and discrimination could ignore the plight of the Palestinian people, who were subject to violence and inhuman treatment and the destruction of their economic infrastructure as a result of the ongoing blockades to which Palestinians and their leaders were subjected by the continuing Israeli military occupation. That occupation was incompatible with the purposes and principles of the Charter of the United Nations, constituted a gross violation of human rights and international humanitarian law and posed a grave threat to international peace and security.

53. His Government had consistently sought to achieve peace: in 1982, it had proposed the "Fez Initiative", adopted by the Arab States, calling on Israel to withdraw from the occupied territories in return for a peaceful existence within secure borders. Israel had, however, failed to respond to that initiative. Despite the lack of progress and the deteriorating situation in the Palestinian territories, Crown Prince Abdullah had recently put forward a peace initiative based on the principle of land for peace and the resolutions of United Nations bodies. It would guarantee peace and security for all, normal relations between Israel and the Arab States in return for full withdrawal from the occupied Arab territories, the establishment of a Palestinian State with its capital in East Jerusalem and settlement of the refugee question in accordance with the relevant resolutions. That initiative had been adopted unanimously at the recent Arab Summit Conference in Beirut, which had also expressed the desire of the Arab States to achieve a lasting, just and comprehensive peace in the Middle East in a manner consistent with the international community's responsibility to promote peace and security.

54. Despite the adoption of that initiative by the Arab States and the positive reaction of the international community, the Israeli Government continued to take the path of violence, placing a defenceless people and its leaders under siege and attempting to eliminate the Palestinian Authority by subjecting its infrastructure to even greater damage and devastation. The Commission should endorse and support the initiative and should emphasize the need for an immediate and full Israeli withdrawal from all the Palestinian territories so that all efforts and resources could be devoted to furtherance of the peace process in the best interests of the Palestinians, Israelis, the Arabs of the region and the world as a whole. Tolerance, cooperation, equal treatment and respect for others must triumph over discrimination, racism and assertions of superiority.

REPORT OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS
AND FOLLOW-UP TO THE WORLD CONFERENCE ON HUMAN RIGHTS (agenda item 4)
(continued) (E/CN.4/2002/L.8/Rev.1)

55. Draft resolution on strengthening of the Office of the United Nations High Commissioner for Human Rights (E/CN.4/2002/L.8/Rev.1)

56. Mr. PUJA (Indonesia), introducing the draft resolution, said that the representatives of the Libyan Arab Jamahiriya, the Syrian Arab Republic and Venezuela had also become sponsors. The draft resolution called for the allocation of increased resources to the Office of the High Commissioner for Human Rights (OHCHR) and for increased flexibility in the management of those resources and regretted that the response to the High Commissioner's request to States not to earmark their voluntary contributions for specific purposes had not been satisfactory. Informal consultations on the draft resolution had taken place in an atmosphere of positive cooperation and he hoped it would be adopted by consensus.

57. Ms. WONG (Secretariat) said that, under operative paragraphs 5, 10 and 12 of the draft resolution, the Commission would reiterate the need to ensure that all necessary financial, material and personal resources were provided from the regular budget without delay to the human rights programme, to enable OHCHR to carry out its mandates efficiently, effectively and expeditiously; recommend that the Economic and Social Council and the General Assembly provide OHCHR with ways and means commensurate to its increasing tasks, as well as more resources for its special rapporteurs; and emphasize the need for an increase in the allocation of resources from within the regular budget for advisory services and technical cooperation in the field of human rights.

58. In resolution A/56/254 A, the General Assembly had approved resources under the regular budget of \$44,727,100 for OHCHR for the biennium 2002-2003. The General Assembly had been informed that OHCHR had projected that extrabudgetary resources of \$62,947,300 might be made available for OHCHR during the same period.

59. She drew attention to resolution 45/248, part B, section VI, in which the General Assembly reaffirmed that the Fifth Committee was its appropriate Main Committee entrusted with responsibilities for administrative and budgetary matters, reaffirmed the role of the Advisory Committee on Administrative and Budgetary Questions (ACABQ), expressed concern at the tendency of its substantive Committees and other intergovernmental bodies to involve themselves in administrative and budgetary matters, and invited the Secretary-General to provide all intergovernmental bodies with the required information regarding procedures for administrative and budgetary matters.

60. The draft resolution was adopted.

61. Ms. GERVAIS-VIDRICAIRE (Canada) said that her delegation had supported the draft resolution despite some reservations with regard to paragraph 1, which addressed the question of geographical representation within OHCHR in a way that was not entirely consistent with Article 101 of the Charter of the United Nations. Under Article 101, the Secretary-General had

the sole authority for appointing staff under regulations established by the General Assembly, with a view to securing the highest state of efficiency, competency and integrity, paying due regard to the importance of recruiting the staff on as wide a geographical basis as possible.

THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OF ALIEN DOMINATION OR FOREIGN OCCUPATION (agenda item 5) (continued) (E/CN.4/2002/L.4, L.6 and L.7)

Draft resolution on the situation in occupied Palestine (E/CN.4/2002/L.4)

62. Mr. ATTAR (Saudi Arabia), introducing the draft resolution, said that the right of peoples to self-determination had been on the agenda of the United Nations for many years. The principle of self-determination was enshrined in Articles 1 and 55 of the Charter of the United Nations, the relevant resolutions and declarations of United Nations bodies, and the provisions of the International Covenants on Human Rights. The General Assembly had adopted many resolutions reaffirming the legitimate right of the Palestinian people to self-determination.

63. A change had been made to the eighth preambular paragraph, which should read: "*Welcoming and endorsing the Arab peace initiative based on the proposals of His Royal Highness Crown Prince Abdullah Ibn Abdul-Aziz of the Kingdom of Saudi Arabia*".

64. In view of its importance, he hoped that the Commission would be able to adopt the draft decision by consensus. He was convinced that recognizing the legitimate right of the Palestinian people to self-determination would guarantee peace and security in the Middle East.

65. Mr. LEBAKINE (Secretary of the Commission) said that the representatives of Austria, Belgium, France, Germany, Italy, Portugal, Spain, Sweden, Togo and the United Kingdom and the observers for Bangladesh, Denmark, Finland, Greece, Iceland, Ireland, Luxembourg, Madagascar, Malta, Netherlands, Norway and Turkey had become sponsors of the draft resolution, which had no financial implications.

66. Mr. PEREZ-VILLANUEVA y TOVAR (Spain), speaking on behalf of the European Union and of the associated countries of Bulgaria, Estonia, Hungary, Malta, Slovakia and Turkey, said that the Union endorsed the draft resolution which did not in any way pre-empt the outcome of the negotiations between the parties to the dispute. The Palestinian people had a legitimate and inalienable right to self-determination, including the right to establish a sovereign and independent State. Furthermore, the creation of a sovereign, democratic and peaceful Palestinian State, on the basis of existing agreements and negotiation, was the best way to guarantee Israel's security and recognition as an equal partner in the region. Constructive dialogue was the only way to achieve lasting peace. Therefore, he urged both parties to resume peace negotiations and to find a solution in accordance with the relevant Security Council resolutions, including resolution 1397 (2002) which affirmed a vision of a region in which two States, Israel and Palestine, lived side by side within secure and recognized borders. The Union was determined to make a significant contribution towards the future peace, stability and prosperity of the Middle East region.

67. Mr. RAMLAWI (Observer for Palestine) said that the question of Palestine had been on the agenda of the United Nations for over 30 years. The right to self-determination was recognized under international humanitarian law, and was enshrined in the provisions of the International Covenants on Human Rights. The Commission had adopted many resolutions affirming the legitimate right of the Palestinian people to self-determination, but Israel had chosen to disregard them and continued to cause great harm to the lives, land and property of the Palestinian people. He was confident that the Commission would adopt the draft resolution which represented the triumph of its values and would help to put an end to military domination and all the crimes perpetrated against the people of Palestine. The Commission must do its utmost to guarantee the Palestinian people their right to self-determination.

68. Mr. LEVY (Observer for Israel) said that, although the issue of self-determination for the Palestinian people did have some impact on human rights, it was essentially part of a much broader political context to be determined in the bilateral track of negotiations between Israel and Palestine. Israel supported the principle of self-determination and the right of all peoples to govern themselves, including those in the Middle East.

69. More than 20 years previously, in the framework of the Camp David meetings, Israel had recognized the legitimate right of the Palestinian people and their just requirements. Through the Oslo process, Israel and the Palestinians had agreed to recognize their mutual legitimate political rights, to be achieved within the framework of the peace negotiations on a permanent solution to the conflict.

70. The two parties had recently negotiated outstanding permanent status issues, including the future status of the territories under dispute. However, negotiations at the Camp David summit had broken off as a result of the strategic choice of the Palestinians to ignore the Israeli proposals and to embark on a campaign of violence. Once the violence had ended, peace talks were bound to resume.

71. He urged the Commission not to pre-empt the outcome of the issue by adopting the draft resolution, which would only undermine attempts to reach a successful conclusion of the negotiations. The matter should be left for the parties themselves to resolve.

72. Mr. ARENALES FORNO (Guatemala), speaking in explanation of vote before the voting, said his Government recognized the right of the Palestinian people to self-determination through the creation of a Palestinian State. However, until all countries in the region expressly accepted Israel's right to exist as a State, in accordance with Security Council resolutions 242 (1967), 338 (1973), 1397 (2002) and 1402 (2002), the only way his delegation could support the inalienable right of the Palestinian people to self-determination was within the framework of negotiations between the two parties and the express acceptance by all the countries in the region of the agreements reached.

73. The questioning since 1948 of the creation of an Israeli State to live side by side with a Palestinian State, together with the many wars and acts of terrorism tolerated and encouraged by certain political and religious leaders, made the right of Jewish people to self-determination very vulnerable.

74. His delegation could support only a resolution that addressed the right of both peoples to self-determination and provided for two States with internationally recognized and secure borders. The draft resolution would not help to bring about a negotiated settlement that would allow both parties to live in peace. Therefore, while recognizing the right of the Palestinian people to self-determination, his delegation would vote against the draft resolution.

75. At the request of the representative of Guatemala, a recorded vote was taken on the draft resolution.

In favour: Algeria, Argentina, Armenia, Austria, Bahrain, Belgium, Brazil, Burundi, Cameroon, Canada, Chile, China, Costa Rica, Croatia, Cuba, Czech Republic, Democratic Republic of the Congo, Ecuador, France, Germany, India, Indonesia, Italy, Japan, Kenya, Libyan Arab Jamahiriya, Malaysia, Mexico, Nigeria, Pakistan, Peru, Poland, Portugal, Republic of Korea, Russian Federation, Saudi Arabia, Senegal, Sierra Leone, South Africa, Spain, Sudan, Swaziland, Sweden, Syrian Arab Republic, Thailand, Togo, Uganda, United Kingdom of Great Britain and Northern Ireland, Uruguay, Venezuela, Viet Nam, Zambia.

Against: Guatemala

Abstaining: None

76. The draft resolution, as orally revised, was adopted by 52 votes to 1.

77. Mr. Jakubowski (Poland) resumed the Chair.

Draft resolution on the question of Western Sahara (E/CN.4/2002/L.6)

78. The CHAIRPERSON informed the Commission that the draft resolution had no financial implications.

79. The draft resolution was adopted.

Draft resolution on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination (E/CN.4/2002/L.7)

80. Mr. REYES RODRIGUEZ (Cuba), introducing the draft resolution, said that it welcomed the report of the Special Rapporteur on the question of the use of mercenaries as a means of impeding the exercise of the right of peoples to self-determination (E/CN.4/2002/20) and reaffirmed that the use of mercenaries and their recruitment, financing and training were a cause of grave concern to all States and violated the purposes and principles of the Charter of the United Nations.

81. The draft resolution urged all States to take all necessary steps and exercise the utmost vigilance against the menace posed by the activities of mercenaries, to take legislative steps to ensure that their territories and territories under their control, as well as their nationals, were not

used for the recruitment, assembly, financing, training and transit of mercenaries. It welcomed the entry into force of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries and lastly, requested the Special Rapporteur to report to the Commission on his work.

82. Mr. LEBAKINE (Secretary of the Commission) said that the representatives of Armenia, Cameroon, Costa Rica, Ecuador and Uganda and the observers for the Dominican Republic and El Salvador had become sponsors of the draft resolution, which had no financial implications.

83. Mr. PEREZ VILLANUEVA y TOVAR (Spain), speaking in explanation of vote before the voting on behalf of the States members of the European Union and associated States that were members of the Commission on Human Rights, said that the Union shared many of the concerns expressed in the Special Rapporteur's report. However, as in previous years, it was unable to support the draft resolution because it did not believe that the Commission was the right forum to deal with the problems of mercenary activity. It doubted whether the use of mercenaries should be dealt with primarily as a human rights problem and as a threat to the right of peoples to self-determination. It was of the opinion that the mandate of the Special Rapporteur should be terminated and that the matter of mercenary activity should be considered directly by the General Assembly (Sixth Committee). However, the Union would continue to participate actively, in the appropriate forums, in discussions with interested States on how to curb the threats posed by mercenary activities.

84. At the request of the representative of Spain, a recorded vote was taken on the draft resolution.

In favour: Algeria, Argentina, Armenia, Bahrain, Brazil, Burundi, Cameroon, Chile, China, Costa Rica, Cuba, Democratic Republic of the Congo, Ecuador, India, Indonesia, Kenya, Libyan Arab Jamahiriya, Malaysia, Mexico, Nigeria, Pakistan, Peru, Russian Federation, Senegal, Sierra Leone, South Africa, Sudan, Swaziland, Syrian Arab Republic, Thailand, Togo, Uganda, Uruguay, Venezuela, Viet Nam, Zambia.

Against: Belgium, Canada, Czech Republic, Germany, Japan, Poland, Sweden, United Kingdom of Great Britain and Northern Ireland.

Abstaining: Austria, Croatia, France, Guatemala, Italy, Portugal, Republic of Korea, Saudi Arabia, Spain.

85. The draft resolution was adopted by 36 votes to 8 with 9 abstentions.

86. Ms. GERVAIS-VIDRICAIRE (Canada), said that the activities of private military companies and security services, military consultants and privately hired soldiers raised complex issues of human rights, State sovereignty and humanitarian law. Although her delegation had been pleased to see some recognition of that fact in the resolution, it was disappointed that such complex issues were addressed from a limited perspective which contributed little to the promotion and protection of human rights.

87. Her delegation was particularly concerned at the narrow focus on the self-determination of peoples, believing that all abuses of human rights should be given equal treatment. The term "mercenary" had a legal definition which applied to only a few groups or individuals. Given the growing consensus on the need for a more effective global approach to the issue, her delegation was disappointed that the resolution was so limited in its scope.

RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND ALL FORMS OF
DISCRIMINATION (agenda item 6) (continued) (E/CN.4/2002/L.9)

Draft resolution on combating defamation of religions (E/CN.4/2002/L.9)

88. Mr. AKRAM (Pakistan), introducing the draft resolution on behalf of the OIC, said that it had been inspired by the campaign to misrepresent and defame Islam and Muslims throughout the world. Since 11 September 2001, that campaign had intensified and Islam had been deliberately associated with terrorism. The war against terrorism had been misused by some to deny people their right to self-determination and freedom, as currently witnessed in Palestine. Similarly, the massacre of hundreds of Muslims in certain countries had not even been mentioned by prime defenders of human rights in the current forum.

89. The resolution reflected the deep concern of Muslim countries and was based on language agreed in the past and additional concepts reflecting new realities. The sponsors of the draft resolution had made some changes to the text in response to suggestions by other delegations. In the ninth preambular paragraph the word "some" had been before "non-Muslim countries". In the tenth preambular paragraph, the words "that the tragic events of 11 September underline" had been deleted.

90. In paragraph 3, the words "to defame Islam, its tenets and values, and Muslim people" should be replaced by the words "on defamation of religions". In paragraph 7, the words "of all religions, in particular" had been added after the words "places of worship". In paragraph 12, the words "the Special Rapporteur on freedom of religion or belief" had been replaced by the words "the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance". He hoped that, with those changes, the draft resolution would be adopted by a large majority.

91. Mr. PEREZ-VILLANUEVA y TOVAR (Spain) thanked the representative of Pakistan for the changes he had made to the draft resolution and requested, on behalf of the European Union, that members should be given some time to consider them. He therefore suggested that the vote on the draft resolution be postponed until a later stage in the day.

92. Mr. AKRAM (Pakistan), speaking on behalf of the OIC, said that, although he had not had the opportunity of consulting the other sponsors, he was sure that they would have no objection to postponing the vote.

QUESTION OF THE VIOLATION OF HUMAN RIGHTS IN THE OCCUPIED ARAB TERRITORIES, INCLUDING PALESTINE (agenda item 8) (continued) (E/CN.4/2002/L.2)

Draft resolution on human rights in the occupied Syrian Golan (E/CN.4/2002/L.2)

93. Mr. SALLOUM (Syrian Arab Republic), introducing the draft resolution, said that his delegation was submitting it once again because Israeli occupation of the Golan continued, as it had done since 1967, in violation of human rights and international resolutions, depriving the people of the Golan of medical assistance and the right to travel or visit their families and imposing upon them the Hebrew language and even Israeli identity cards. Military occupation by one State of another independent sovereign State, or even a part of it, was unacceptable and his delegation hoped that the draft resolution would receive overwhelming support.
94. Mr. LEBAKINE (Secretary of the Commission) said that the representatives of Malaysia and Togo had become sponsors of the draft resolution, which had no administrative or financial implications.
95. Ms. GERVAIS-VIDRICAIRE (Canada), speaking in explanation of vote before the voting, said that, while there were some elements of the draft resolution which her delegation agreed with, there were others it could not support. Her delegation acknowledged that the Golan Heights were occupied territories and did not recognize permanent Israeli control over the territories it had occupied in 1967. It also supported the concept that the peace process had to be based on Security Council resolutions 242 (1967) and 338 (1973). However, the draft resolution did not provide the full context or a balanced assessment of the situation in the region and her delegation would therefore abstain.
96. Mr. LEVY (Observer for Israel) said that Israel had come into possession of the Golan Heights in self-defence in a war initiated by neighbouring Arab countries, including Syria, which had lost the war and, consequently, lost the territory. In recent years, his Government had been negotiating with the Syrians to reach a peaceful solution to outstanding problems and had, at one point, been very close to an agreement, but Syria had rejected its proposals. Israel was still committed to negotiating a peace settlement with Syria and the Commission's adoption of a resolution on the issue would prejudice the outcome of those negotiations and create a disincentive for the Syrians to return to the negotiating table.
97. Mr. ARENALES FORNO (Guatemala), said that Security Council resolutions 242 (1967) and 338 (1973) called for the recognition of Israel's right to exist within internationally recognized safe borders. However, despite Israel's internationally recognized right to exist there seemed to be a numbers of States intent on seeking its destruction. Consequently, only after the recognition and negotiation of secure borders between Israel and its neighbours as part of an international solution guaranteeing Israel's security would it be possible for Israel to adhere to the contents of the draft resolution regarding territory. His delegation would thus be voting against the resolution.
98. Mr. SALLOUM (Syrian Arab Republic), said that, once again, the observer for Israel had distorted the truth. He had asserted that Syria had attacked Israel and lost the war but there were hundreds of books stating who had launched the attack and it was also quite clear from the

memoirs of Moshe Dayan, the Israeli Minister of Defence at the time, who had attacked first. The observer for Israel was also distorting the facts when he said that Syria and Israel had been on the point of reaching agreement but that Syria had rejected the proposals - it was Israel that had rejected the agreement.

99. The leaders of Israel had been pursuing a policy of human rights violations for a very long time. It had begun in 1948 when they had assassinated Count Bernadotte, the Swedish mediator who had had been trying to find a peaceful solution to the conflict. There had been many other instances of unarmed people being killed because they had spoken out for peace or presented ideas for avoiding bloodshed. Even Israeli peacemakers had been killed, such as Prime Minister Yitzhak Rabin.

100. The only way to end the bloodshed was for Israel to withdraw behind the borders of 4 June 1967. Israeli violations in the Syrian Golan were clear from the reports of the special rapporteurs. Israel had done nothing to improve the human rights situation of the Golan population - it prevented them from meeting their families, deprived them of their history and imposed Israeli identity on them - in defiance of international law. Security Council resolution 242 (1967) called for Israel's withdrawal. If, on behalf of the Israeli leadership, the observer for Israel was able to say that its forces were prepared to withdraw, that would save a great deal of time for the Commission to devote to other issues. He urged the Commission to adopt the proposed draft resolution and to put an end to the Israeli occupation of the Syrian Golan.

101. At the request of the representative of Canada, a recorded vote was taken on the draft resolution.

In favour: Algeria, Argentina, Armenia, Bahrain, Burundi, Cameroon, Chile, China, Cuba, Democratic Republic of the Congo, Ecuador, India, Indonesia, Kenya, Libyan Arab Jamahiriya, Malaysia, Mexico, Nigeria, Pakistan, Republic of Korea, Russian Federation, Saudi Arabia, Senegal, Sierra Leone, South Africa, Sudan, Swaziland, Syrian Arab Republic, Thailand, Togo, Uganda, Venezuela, Viet Nam, Zambia.

Against: Guatemala.

Abstaining: Austria, Belgium, Brazil, Canada, Costa Rica, Croatia, Czech Republic, France, Germany, Italy, Japan, Peru, Poland, Portugal, Spain, Sweden, United Kingdom of Great Britain and Northern Ireland, Uruguay.

102. The draft resolution was adopted by 34 votes to 1 with 18 abstentions.

The meeting rose at 1 p.m.